

### **AMENDMENTS TO THE DRAWINGS**

The attached three sheets of drawings are intended to replace FIG. 1 with new FIGS. 1A-1C.

## REMARKS

**Office action summary.** The Examiner objects to the drawings for failure to show some elements recited in claims. The Examiner further rejects all claims as not enabled.

These objections and rejections are overcome by the amendment herein and otherwise traversed.

The withdrawal of the requirement for election of species is most appreciated.

**Objection to the drawings.** The Examiner has objected to the lack of components in the drawings corresponding to the claim terms “motor,” “explosion-proof container,” “source of AC current,” “battery backup,” “leak detector,” “additional remote,” “gas flow sensor,” “monitoring station,” “nurse workstation,” and “means for monitoring.” The drawings have been amended to display these components in new FIGS. 1B and 1C.<sup>1</sup> Each recited feature is depicted as a labeled rectangle or (in the case of “additional remote” and “source of AC current”) as a symbol. *Cf.* 37 CFR 1.83(a). Because the features are described already in the specification and/or claims, no new matter is introduced by this amendment. The specification is amended to make reference to the new figures.

**Enablement rejection.** The Examiner has rejected all claims for lacking enablement. This rejection is respectfully traversed.

The specific points that the Examiner says lack enablement are as follows:

A. “it is disclosed/claimed that the remote control unit controls the valve independently from any inhalation activity and that the system excludes any means for automatically adjusting the gas flow according to the level of physical activity of the individual. However, in paragraph [0049]-[0052] the use of the system in conjunction with a means for monitoring an individual's oxygen level or physical activity is disclosed.”

The claims recite the non-use of *automatic* adjustment of the gas flow according to the individual's physical activity. The inventive concept does not exclude, however, *manual* adjustment of the gas flow according to the individual's physical activity or oxygen level (or anything else). That level may be monitored and displayed, for example to a nurse, to another health care provider, to a caregiver, or to the patient himself/herself. These persons may use the inventive system for *manual*, not automatic, adjustment of the gas flow according to their judgment based on the measured physical activity or other factors, which can be displayed to

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<sup>1</sup> In addition for convenience FIG. 1 has been renamed FIG. 1A and slightly redrawn.

them. That is why the means for monitoring is disclosed and is recited in certain dependent claims.

B. “the details of such for monitoring an individuals oxygen level or physical activity is merely disclosed by means of example (see paragraphs [0050]-[0051]) and the explicit details to make and/or use the invention is not disclosed.”

Oxygen level and physical activity monitors are known in the art. “A patent need not teach, and preferably omits, what is well known in the art.” MPEP § 2164.01 (citing, for example, *In re Buchner*, 929 F.2d 660, 661 (Fed. Cir. 1991)).

U.S. Patent No. 5,928,189, cited in the Background section (paragraph [0007]) and incorporated by reference (paragraph [0059]), discloses particular physical activity sensors. See, e.g., col. 3, line 63 to col. 4, line 34 of U.S. Patent No. 5,928,189. U.S. Patent No. 5,890,490, also incorporated by reference, states that “Oxygen saturation measurement devices are available from a number of commercials [sic] sources such as Nellcor Puritan Bennett model number N-3000” (col. 8, lines 60-63). There is further discussion of oxygen sensors in U.S. Patent No. 6,371,114, also incorporated by reference. This provides further support for the recital of oxygen level and physical activity sensors.

The Examiner also appears to be committing legal error by complaining of a disclosure “by means of example.” “A single embodiment may provide broad enablement in cases involving predictable factors, such as mechanical or electrical elements.” MPEP § 2164.03. To enable oxygen level and physical activity monitoring, the applicant need not describe every possible means of achieving such monitoring. Examples suffice.

C. “Applicant set forth three different user interfaces . . . that utilize a button selection feature (Fig. 3A), a digital display (Fig. 3B), and a dial interface (Fig. 3C) and has failed to set forth the explicit details to make and/or use the user interfaces in conjun[ct]ion with the system schematically shown in Figure 2.”

Given the state of the art in the design of remote controls, which exist in almost every American home, the substantial disclosure of how to implement the user interfaces of Figs. 3A-3C in the patent is fully adequate.

We read first in paragraph [0041] of the patent that microprocessor control could be used in the remote, together with a transmitter and receiver and antenna. The application notes: “Those of ordinary skill in the art will recognize that the selection of an appropriate microprocessor depends the capabilities of its central processing unit, memory, timer(s), port(s),

software and other components.” We then read in paragraph [0043] about the technical characteristics of the communication between the remote and the gas valve. In paragraph [0044] we are told about one way that the remote’s microprocessor may control the flow of gas.

Once the form of the user interface is decided upon, as described in paragraph [0048] and the figures, it then becomes a matter of programming the microprocessor to receive inputs from the buttons and receiver and act upon the transmitter and digital display in order to cause these to act appropriately. The programming of embedded microprocessors and the design of systems containing microprocessors in general is very well known. There are university courses and textbooks on the subject, e.g., Stuart R. Ball, *Embedded microprocessor systems: real world design* (3d ed. 2002). The control of buttons and a display (in a calculator) was historically the very first application for the microprocessor, indeed the application for which Ted Hoff (then at Intel) invented the microprocessor in 1971. Numerous cases have held that “when disclosure of software is required, it is generally sufficient if the functions of the software are disclosed, it usually being the case that creation of the specific source code is within the skill of the art.” *Robotic Vision Systems v. View Engineering, Inc.*, 112 F.3d 1163, 1166 (Fed. Cir. 1997). In sum, there is no need for further disclosure to enable a person of skill in the art to make and use the user interfaces of FIGS. 3A-3C.

**D.** “Also, Applicant has set forth use of the system with voice recognition (see the disclosure set forth by example in paragraph [0045]) and has failed to set forth the explicit details to make and/or use the voice recognition system in conjunction with the system schematically shown in Figure 2.”

Voice recognition is only claimed in claim 19, and so this point is at most applicable to claim 19. Furthermore, voice recognition is a well known technology which has been in use in connection, for example, with telephone response systems for a number of years. The attached excerpt from the on-line archive of PC Magazine shows that version 6 of a commercial voice recognition system for PC’s, Dragon Naturally Speaking, was positively reviewed on February 26, 2002, prior to the filing of the present application. That system set for itself a task – translating speech into written text – far more complicated than the voice recognition task here which could be accomplished with the recognition of only a few commands such as “more” and “less.” A search on the PTO issued patents database also indicates that there were 188 issued U.S. patents with “voice recognition” in the title applied for between January 1, 1976 and the day

before the filing of the present application, further demonstrating the depth of experience which exists in this technology.

E. “Furthermore, Applicant has set forth the valve of the system as being manually operable when an AC source is inoperative.”

There is sufficient disclosure in the application to teach how to make and use this feature of the invention. An example of how to accomplish this is given in U.S. Patent No. 5,755,224 (also incorporated by reference in the present application), where the overall valve system consists of a solenoid operated valve in parallel with a manual bypass valve. Furthermore, such a valve is only claimed in claim 32, so that the Examiner’s reasoning is only applicable to that claim.

Going beyond these specific points, the Examiner has not provided an analysis of enablement in terms of MPEP § 2164.01. A number of factors bearing on enablement – often referred to as the *Wands* factors – are recited there.

- (A) The breadth of the claims;
- (B) The nature of the invention;
- (C) The state of the prior art;
- (D) The level of one of ordinary skill;
- (E) The level of predictability in the art;
- (F) The amount of direction provided by the inventor;
- (G) The existence of working examples; and
- (H) The quantity of experimentation needed to make or use the invention based on the content of the disclosure.

The Examiner has not discussed any of those factors. Without such an analysis, there is not a *prima facie* case of enablement for the applicants to answer.

In sum, in light of the abundant disclosure of the present application, the Examiner has not established any lack of enablement

**Conclusion.** It is believed that the rejections have been overcome by the present amendment and arguments. If the Examiner has any questions about this response, he is respectfully requested to telephone the undersigned counsel at his direct dial (650) 251-7712.

Respectfully submitted,

By:



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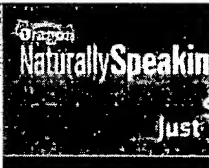
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4. Apple iPod™ nano Second Gen. Black (8 GB, MA497LL/A) MP3 Player
5. Apple iPod touch (8 GB, 2000 Songs) Digital Media Player (MA623LL/A)

more &gt;

## Dragon NaturallySpeaking Professional Solutions 6.0



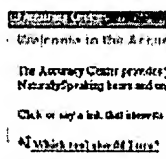
REVIEW DATE: 02.26.02

- Product: Dragon NaturallySpeaking Professional Solutions 6.0
- List Price: \$695
- Requires: 400-MHz CPU or faster; 128MB RAM; 300MB hard drive space; ScanSoft-certified sound card; Microsoft Windows 98, Me, NT4.0 with SP6, 2000, or XP
- Company Info: ScanSoft Inc., 978-977-2000, www.scansoft.com

✓ Editor's Rating: ●●●●○

✓ Reader Rating: ●●●●●

Buy It Here: \$695.00



ENLARGE

By Greg Alwang

ScanSoft's Dragon NaturallySpeaking Professional Solutions 6.0 continues to offer expanded correction options and guides for improving accuracy. With high-end features, such as the ability to script complex voice macros, NaturallySpeaking (\$695 list) is an ideal fit for demanding business professionals who do a lot of dictation or need a tool for increasing productivity. If you don't need advanced macros or the ability to save, export, or import voice files, Dragon NaturallySpeaking Preferred 6.0 offers similar usability and accuracy features for a reasonable \$199.

NaturallySpeaking lets you easily save, export, and import speech files from another PC without having to retrain the system. In addition to multiline and step-by-step macros, the software lets you speech-enable entire applications using VBA-compatible scripts.

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Corrections are now accepted from voice, mouse, or keyboard input. With NaturallySpeaking's vocabulary editor, you can easily train and add new words or lists. The new Accuracy Center offers usage tips, such as finding voice commands or adding contact names from your Outlook or Lotus Notes address book using the new Email Builder.

You can run the acoustic optimizer to compile data from corrections and imported documents. We experienced about 94 percent accuracy after the initial 5-minute training; accuracy rose to around 99 percent after only 2 hours, a second training session, and running the acoustic optimizer. (We had similar initial results with Office XP, but accuracy increased more slowly and remained at about 90 to 95 percent because of the lack of correction options).

NaturallySpeaking tags Web links with numbers, so you can just say the number to select a link. One feature we liked was the "start scrolling" command, which scrolls long text pages slowly up or down.

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stefan\_sherwood

Member rating: ●●●●●

February 6, 2002

This is simply the best speech recognition product ever made. The user interface is excellently designed and its features, intuitive commands, and high accuracy all make it a joy to use.

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